Petition

Office-Supreme Court, U.S.
FILED
AUG 12 1981
ALEXANDER L. STEVAS,
CLERK

81-370
CASE NO.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

KARA JAYNE LANGDON

Petitioner

vs.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HUGH D. HOLBROCK
MICHAEL D. SHANKS
315 South Monument Avenue
Hamilton, Ohio 45011
Telephone: (513) 868-7600
Attorneys for Petitioner

The Petitioner, Kara Jayne Langdon, respectfully prays that a Writ of Certiorari issue to review the Order of the United States entered in this proceeding on June 16, 1981.

QUESTIONS PRESENTED FOR REVIEW

1. Whether a conflict of judicial opinion regarding the character and use of circumstantial evidence in a criminal case between United States Courts of Appeals of different judicial circuits denied Kara Jayne Langdon due process and equal protection of the law.

2. Whether in a trial concerning the charge of embezzlement in violation of 18 U.S.C. Section 656 the Federal District Court for the Southern District of Ohio properly submitted the issues to a jury when the prosecutor's case was based entirely upon circumstantial evidence and such evidence did not rule out every reasonable

The Petitioner, Kara Jayne Langdon, respectfully prays that a Writ of Certiorari issue to review the Order of the United States entered in this proceeding on June 16, 1981.

QUESTIONS PRESENTED FOR REVIEW

1. Whether a conflict of judicial opinion regarding the character and use of circumstantial evidence in a criminal case between United States Courts of Appeals of different judicial circuits denied Kara Jayne Langdon due process and equal protection of the law.

2. Whether in a trial concerning the charge of embezzlement in violation of 18 U.S.C. Section 656 the Federal District Court for the Southern District of Ohio properly submitted the issues to a jury when the prosecutor's case was based entirely upon circumstantial evidence and such evidence did not rule out every reasonable

hypothesis of the defendant's innocence.

3. Whether the United States Court of Appeals for the Sixth Circuit erred in ruling that the evidence required for a conviction on circumstantial evidence is no different from that where there is direct evidence.

I N D E X

QUESTIONS PRESENTED FOR REVIEW.....1

STATEMENT OF JURISDICTION.....5

CONSTITUTIONAL PROVISIONS INVOLVED.....5

STATEMENT OF THE CASE.....6

REASONS FOR GRANTING WRIT.....9

1. Conflict of decisions between the Fifth and Tenth Circuit Court of Appeals and the Sixth Circuit Court of Appeals.....9

2. The decision of the United States Court of Appels for the Sixth Circuit denies Kara Jayne Langdon due process of law and equal protection under the Fifth Amendment to the United States Constitution.....10

APPENDIX

Order of the United States Court of Appeals, dated June 16, 1981..App.1

AUTHORITIES

Charles Dowd Box Company vs. Courtney,
368 U.S. 502 (1962).....10

Di Bella vs. United States,
369 U.S. 121 (1962).....10

Perry vs. Commerce Loan Company,
383 U.S. 396 (1966).....10

United States vs. Black,
497 F 2d 1039.....7,8,
9

United States vs. Gomez-Rojas,
507 F 2d 1213.....9

United States vs. Ortiz,
445 F 2d 1100.....9

United States vs. Scott,
578 F 2d 1186.....9

United States vs. Smith,
523 F 2d 771.....9

Vickes vs. The United States,
217 F 2d 228.....9

Constitution of the United States of
America, Amendment V.....5

STATEMENT OF JURISDICTION

The Order of the Court of Appeals for the Sixth Circuit was entered on June 16, 1981. This Petition for Certiorari was filed within sixth (60) days of the date of that order. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States of America, Amendment V:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the malitia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On March 26, 1980 Kara Jayne Langdon was indicted in the United States District Court for the Southern District of Ohio charging five separate violations of 18 U.S.C. Section 656, specifically accusing defendant of embezzling a total of $13,850.00 from the Citizen's Bank of Hamilton, Ohio, a federally insured savings institution. After a plea of not guilty to the charges in the indictment, a trial was held in the District Court in front of the Honorable Arthur Spiegel. At trial, the government attempted to establish the guilt of Miss Langdon entirely through the use of circumstantial evidence. No direct evidence of any type was presented on behalf of the prosecution to establish that Kara Jayne Langdon, in fact, converted funds belonging to a federally insured savings institution to her own use. In contrast, defense counsel established at trial that there were

numerous possibilities, other than the guilt of defendant, that could account for the missing funds.

At the close of the governments case, defense counsel moved for a judgment of acquital under Rule 29 of the Federal Rules of Criminal Procedure. To support defense counsel's motion, the Court was cited the case of the United States vs. Black, 497 F 2d 1039 (5th Circuit 1974) as authority for the proposition of law that before the Court could submit a matter to the jury wherein an essential element of a criminal offense was based solely upon circumstantial evidence, that evidence must exclude every reasonable hypothesis of the defendant's innocence. The Court overruled defense counsel's motion and the matter was submitted to a jury. Upon the return of a verdict of guilty as to the counts charged in the indictment the defendant appealed to the

United States Court of Appeals for the Sixth Circuit citing as error the District Court's refusal to grant defendant's Motion of Acquital made at the close of the prosecution's case and renewed at the close of all of the evidence. The Sixth Circuit Court of Appeals refused to follow the law as stated in the Fifth Circuit case of the United States vs. Black and instead ruled that in the Sixth Circuit, the evidence required for a conviction based entirely upon circumstantial evidence is no different from that where there was direct evidence as to the guilt of the accused. It is upon the conflict upon the decisions of the Fifth and Tenth Judicial Cicruits as compared to the decision of the Sixth Judicial Circuit that this defendant seeks review by this Court.

REASONS FOR GRANTING WRIT

1. Conflict of decisions between the Fifth and Tenth Circuit Court of Appeals and the Sixth Circuit Court of Appeals.

The Court of Appeals for the Fifth Circuit in the United States vs. Black, 497 F 2d 1039, The United States vs. Gomez-Rojas, 507 F 2d 1213, The United States vs. Smith, 523 F 2d 771, Vickes vs. The United States, 217 F 2d 228 and the Tenth Circuit Court of Appeals in The United States vs. Ortiz, 445 F 2d 1100, have specifically ruled that when an essential element of a criminal offense is to be proved solely by circumstantial evidence, that evidence must necessarily rule out every reasonable hypothesis of the accused innocence before the case can be submitted to the jury for consideration. However, as cited by the Sixth Circuit Court of Appeals in the instant matter the case of The United States vs. Scott, 578 F 2d 1186, the Sixth Circuit views the proof of guilt required

by circumstantial evidence to be no different from that when there is direct evidence to sustain a conviction. Accordingly, there is a direct conflict in the Circuits as to the character, weight and sufficiency of proof of guilt in criminal cases based upon circumstantial evidence. Thus, as noted by Rule 17 of the Rules of the Supreme Court, there are special and important reasons for granting Petitioner's request for Certiorari due to the conflict of decisions in this vitally important area of criminal law between the various Federal Court of Appeals. (See e.g., Perry vs. Commerce Loan Company, 383 U.S. 392 (1966); Di Bella vs. United States, 369 U.S. 121 (1962); and Charles Dowd Box Company vs. Courtney, 368 U.S. 502 (1962).

2. The decision of the United States Court of Appeals for the Sixth Circuit denies Kara Jayne Langdon due process of law and

equal protection under the Fifth Amendment to the United States Constitution.

Under the law as reported in the Court of Appeals for the Tenth Circuit and the Court of Appeals for the Fifth Circuit, before the jury could consider the guilt or innocence of Kara Jayne Langdon the prosecution's case would have had to exclude every reasonable hypothesis of her innocence. Upon a showing by defense counsel of other reasonable possibilities to account for the missing bank funds the District Court would, in those circuits, be forced to grant defendant's Motion For Acquital under Rule 29 of the Federal Rules of Criminal Procedure. That protection of law is not equally applied to those defendants accused in the Sixth Circuit according to the present decisions, however. In the instant case the Court of Appeals for the Sixth Circuit has ruled that a jury may consider the circumstantial

evidence attempting to establish the guilt of the defendant, whether or not that evidence excluded any reasonable possibility of the defendant's innocence. In other words, under the present disparity of decisions between the Judicial Circuits, Kara Jayne Langdon under the facts of this case would have been found not guilty in the Tenth and Fifth Judicial Circuits but guilty in the Sixth Judicial Circuit. Such a disparity directly contradicts the constitutional protections provided by the Fifth Amendment and it is imperative that this Court grant defendant's Petition For Writ of Certiorari in order to correct this blatant constitutional violation.

Respectfully Submitted,

HOLBROCK, JONSON, BRESSLER & HOUSER
315 South Monument Avenue
Hamilton, Ohio 45011
Telephone: 868-7600 (513)

By_____
Hugh D. Holbrock

and

By_____
Michael D. Shanks

APPENDIX

FILED
June 16, 1981
John P. Hehman,
Clerk

NO. 80-3737

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

KARA JAYNE LANGDON ORDER

Defendant-Appellant

BEFORE: LIVELY and ENGEL, Circuit Judges;
PHILLIPS, Senior Circuit Judge

The defendant appeals from her jury conviction on five counts of embezzlement in violation of 18 U.S.C. Sections 656 and 2. She argues that the district Court improperly limited attempts of her counsel to establish other reasonable

possibilities than embezzlement for the fact that money which was charged to her as a bank teller was not properly accounted for. Any error in sustaining the objection of the prosecution to the question was cured when immediately thereafter the same witness was permitted to answer a nearly identical question and to state to the jury that it would be possible for someone to get into the defendant's cash drawer. Thus the defendant was not impermissibly limited in developing her defense.

The second ground of appeal is that the evidence, which was circumstantial, was insufficient to support the jury verdict and that defendant was entitled to a judgment of acquittal. In this circuit the evidence required for a conviction on circumstantial evidence is no different from that where there is direct evidence. United States vs. Scott, 578 F 2d 1186, 1191-92 (6th Cir.), cert. denied,

439 U.S. 870 (1978). The district court properly denied the motion for judgment of acquittal.

Upon consideration of the briefs and oral arguments of counsel together with the record on appeal, the court concludes that no reversible error occurred in the district court proceedings. Accordingly, the judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

s/ John P. Hehman

Clerk

Issued as Mandate: July 28, 1981

Costs: None